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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 28th July 2025

S.R.O. No. 574/2025—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Award, dated the 8th July 2025 passed in the ID Case No. 04 of 2023 [under Section 2-A(2)] by the Presiding Officer, Industrial Tribunal Bhubaneswar on the Industrial dispute between The managements of 1. Project Officer, IPDP, Laxmisagar, Bhubaneswar, Dist. Khordha, Odisha 2. Director Animal Husbandry & Services, Odisha, Cuttack 3. Commissioner-*cum*- Secretary Fisheries & A.R.D. Department Secretariat, Odisha, Bhubaneswar and Shri Yudhistir Parida, aged about 42 years, S/o Late Hadibandhu Parida, At Gengutia, P.O. Antia, P.S. Jenapur, Dist. Jajpur, PIN-755023 is hereby published as in the schedule below :—

SCHEDULE

BEFORE THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 04 of 2023

Dated the 8th July 2025

Present :

Shri Benudhar Patra, LL.M.,
Presiding Officer, Industrial Tribunal,
Bhubaneswar.

Between :

The Managements of - . . First Party
1. Project Officer, IPDP, Laxmisagar,
Bhubaneswar, Dist. Khordha, Odisha.
2. Director Animal Husbandry
& Services, Odisha, Cuttack.
3. Commissioner-*cum*-Secretary Fisheries,
& A.R.D., Department Secretariate,
Odisha, Bhubaneswar.

And

Shri Yudhistir Parida, aged about 42 years, . . Second Party
S/o Late Hadibandhu Parida,
At Gengutia, P.O. Antia,
P.S. Jenapur, Dist. Jajpur, PIN-755023.

Appearances :

Shri Amar Kumar Sahoo, Adv.	. .	For the First Party—No. 1
None	. .	For First Party—Nos. 2 & 3
Shri Trilochan Lenka, Adv.	. .	For the Second Party

AWARD

Being disappointed with the inaction of the Labour Machinery in resolving the dispute raised relating to his illegal termination of service with effect from the 1st Septemebr 2020, the second party has approached this Tribunal by way of filing the present application under Section 2-A (2) of the Industrial Dispute Act, 1947 (herein after referred to as "the Act") with a prayer for his reinstatement in service with back wages.

2. The case of the second party, in short, is that on being appointed as a Hen Attendant he continuosly worked under the first party No. 1 from the 12th November 2010 to the 31st August 2020 and while working as such he was once refused employment by the management with effect from the 11th August 2017 and on his challenging such action before the Labour Court, Bhubaneswar in I.D. Case No. 05 of 2018 the matter was settled by an amicable settlement on the 31st May 2019 and as per the terms of the settlement he was reinstated in employment but without any back wages. While the matter stood thus, it is alleged, the first party No. 1 again refused him employment with effect from the 1st September 2020 in gross violation of the provisions of the Act. It is stated by the second party that by the time of such refusal he was receiving a monthly wage of Rs. 900. According to the second party, he having rendered continuous work for a period of more than 240 days while in the employment of the first party No. 1, he is entitled to the reliefs claimed; the reason being that the action of the first party No. 1 is in contravnetion of the provisions of the Act and so also in violation of the principle of natural justice, inasmuch as, after terminating his service the first party has engaged new persons namely Badala Khan, Aloka Sahoo and Niroda Sahoo through service provider.

3. Out of the first party managements, who have been arrayed as parties to the "lis", the first party No. 1, being represented through its Project Officer, contested the claim and filed the written statement. At the outset, the first party No. 1 has taken a stand that the instant application is bad for misjoinder of first party Nos. 2 and 3 as they were neither parties before the Labour Authority nor any notice was issued to them in the matter. Further, the application is challenged for non-joinder of necessary party as the second party has alleged that three persons have been engaged in his place through Private Agency, who has not been arrayed as a party to the proceeding.

Touching upon the claim, it is stated that for functioning of the Poultry Farm of first party No. 1 and to achieve the target, the second party along with four others were engaged in the year 2013-14 on daily wage basis as per need, and that too on rotation basis. It is stated that while continuing so the second party initiated a proceeding under Section 33-C (2) of the Act, bearing I.D. Misc. Case No. 69 of 2017 in the year 2017 and so also preferred an application under Section 2-A (2) bearing I.D. Case No. 5 of 2018 before the Labour Court, Bhubaneswar, which were disposed of by way of a settlement arrived at between the parties and pursuant to the terms thereof the second party was reinstated on the 1st June 2019 to work as a daily wage labourer under the first party No. 1. Specifically, it is averred that since the date of his reinstatement i.e. on the 1st June 2019 the second party has discharged duty under the first party in the following manner :—

June, 2019	. .	3 days	July, 2019	. .	4 days
August, 2019	. .	7 days	September, 2019	. .	9 days
October, 2019	. .	7 days	November, 2019	. .	5 days
December, 2019	. .	2 days	January, 2020	. .	3 days
February, 2020	. .	4 days	March, 2020	. .	4 days
April, 2020	. .	13 days	June, 2020	. .	2 days

Relying upon the above statement the first party has taken a plea that although the second party was employed directly by the first party, yet such engagement was need based and never continuous one. Accordingly, it is pleaded that the second party has never rendered continuous service within the meaning of Section 25-B of the Act during period from the June, 2019 to the June 2020 and further he on his own having remained absent from duty with effect from the 1st July 2020, it is false to allege that he was refused employment by the management.

4. Considering the respective stand of the parties, the Tribunal framed the following issues for determination :—

ISSUES

(i) Whether the case is maintainable ?

(ii) Whether the action of the management of Project Officer, IRDP, Laxmisagar, Bhubaneswar, Dist. Khurda in terminating the services of Shri Yudhistir Parida, Ex-Hen Attendant (day-time) with effect from the 1st September 2020 by way of refusal of employment is legal and/or justified ?

(iii) What relief the workman is entitled to ?

5. To substantiate their respective stand while the second party examined himself as W.W. 1 and relied on documents marked Exts. 1 to 5, the first party in its turn examined its Project Officer, In-charge as M.W. 1 and placed reliance on documents which have been marked as Exts. A to R.

FINDINGS

6. *Issue No. (i) :*—There remains no controversy over the fact that the second party is fighting out a second round of litigation with the first party No. 1 and that the earlier litigation, raised before the Labour Court, Bhubaneswar in I.D. Case No. 5 of 2018 relating to termination of his employment by the first party No. 1, was settled by an amicable settlement on the 31st May 2019 (Ext. L) and in pursuance thereof he was reinstated as a Daily Wage Labour under the first party No.1, with effect from the 1st June 2019. There is also no dispute between the parties that the second party was continuing as a daily wage labourer under the first party No. 1. It further reveals from record that while working as such the second party was again refused employment by the first party No. 1 with effect from the 1st September 2020 which occasioned him to redress grievance before the District Labour Officer, Khurda at Bhubaneswar on the 27th October 2022 vide Ext. 1 seeking legal course of action against the first party. According to the second party, when the labour machinery failed to resolve his grievance within the stipulated period of 45 days, he moved the instant application before this Tribunal challenging his refusal of employment with a prayer for his reinstatement, back wages and all other service benefits. There being no infraction of the provisions of Section 2-A (2) of the Act on the part of the second party, the 2-A (2) application is held to be maintainable. Further, looking to the specific grievance raised by the second party before the labour machinery vide Ext. 1, the challenge to the maintainability of the application due to misjoinder and non-joinder of parties taken by the first party No. 1 carries a little importance to be discussed herein.

The Issue No. (i) is accordingly answered holding the application to be maintainable in this forum.

7. *Issue No. (ii)* :—Under this issue the Tribunal is required to determine as to if action of the first party No. 1 in terminating the services of second party workman with effect from the 1st September 2020 by way of refusal of employment is legal and justified. In the context, it was forcefully argued on behalf of the second party that pursuant to the settlement arrived at between the second party and the first party No. 1 although the second party resumed his duty on the 1st June 2019 and reported to work regularly till the 31st August 2020, yet the first party No. 1 on

one or the other ground did not assign him work continuously till the 31st August 2020 with a view to avoid the rigors of the statutory provisions and further get the works done through outsourcing personnel. Further contention of the learned counsel is that the second party had never remained absent from his duty as allged by the first party No. 1, rather he was refused employment in sheer violation of the provisions of the Act. The rival contentions of the parties lead this Tribunal to examine the materials available on record so as to arrive at a conclusion on this point.

The examination in-chief of the second party seem to be the exact reproduction of his stand taken in the claim statement. Specifically, it has been deposed to by the second party that despite his rendering continuous service for a period of nearing 10 years the management has terminated his service twice, once in the year 2017 and again in the year 2020 in gross violation of the provisions of the Act. In his cross-examination however at Para. 23 the second party has admitted that as per the settlement Award Ext. 3 he has no further claim for the period from the 11th August 2017 to the 31st May 2019. In view of such candid admission, now it is to be examined as to how far the second party is able to establish that he had worked continuously under the first party No. 1 for the period from the 1st June 2019 till the 31st August 2020, which is a pre-condition to set into motion the provision of Section 25-F of the Act and to claim relief there under. True it is, in a case of this nature the burden is on the claimant to satisfy the Tribunal that he had rendered continuous service for a period of 240 days preceding the date of his termination to invoke the statutory relief as provided under Section 25-F of the Act. But, in the case in hand, to rebut the claim the first party No. 1 seems to have taken a definite/consistent plea not only in its written statement but also in its evidence adduced through M.W. No. 1 that the second party having worked for 63 days only preceding 12 calendar months from the date of the alleged refusal of employment he is not entitled to any relief. Even though the first party in its written statement has given a statement showing the days of employment of the second party during the period from the June 2019 to June 2020, but curiously enough it has not produced the Attendance Register to disprove the assertion of second party that despite his regularly reporting to duty he was not being assigend with any work by the first party No. 1. Withholding of such a vital document therefore, creates a shroud over the mind of the Tribunal that had the document been produced the truth or otherwise of the claim could have been unveiled, particularly when M.W. No. 1 in his cross-examination at Para. 29 has stated that the second party was putting his attendance every day in the Attendance Register and the same is available with the management. In the context, further it is noteworthy to refer to the statement of M.W. No. 1 in his cross-examination at Para. 26 wherein he has admitted that the second party on resuming duty under the management was engaged for cleaning and watching the farm and he continuously worked till the 31st August 2020. He has also admitted in his cross-examination in the same paragraph that the work for which the second party was engaged in both the terms (before and after termination) was perennial in nature and would continue till the Farm functions. In the above premises, non-rendering of continuous service by the second party , as pleaded by the managements, appears to be an artificial gap in the employment of the second party maintained by the managements to deprive him of the benefits of the provisions of the Act, even though there is a clear admission of the management through M.W. 1 that the work for which the second party was engaged was perennial in nature and would continue till the Farm functions and further the management is now managing its work through other works through Service Providers pusuant to the letter of the C.D.V.O., Khurda (Ext. P).

8. Challenge is also made by the first party management to the assertion of the second party that he was refused employment on the ground that on and from the 1st September 2020 the second party on his own did not report for duty and therefore it is false to allege that he was ever refused employment by the first party No. 1. On perusal of documents available on record the Tribunal failed to notice any document from the side of the management asking the second party

to resume duty on his remaining absent from duty on and from the 1st September 2020 to appreciate the stand of the first party No. 1 that the second party was called upon to resume duty. Abandonment of employment is purely an intention on the part of an employee which can be assed basing on the circumstances of a particular case and here in the present case no such inference is visible that the second party had any intension to quit his employment, particularly when agreeing with the terms of settlement arrived at between the parties as per Ext. L, he had resumed duty with effect from the 1st September 2020 and also forfeited his back wages. In view of the above, it is hard to believe that the second party had any intention to abandon his employment on and from the 1st September 2020. Rather, for the short comings on the part of the first party No. 1, as indicated *supra*, the stand of the second party that he was refused employment by the first party No. 1 with effect from the 1st September 2020 seems to be probable. Accordingly, the said action is held to be termination of his service and in absence of proper compliance of the mandatory provisions, the action of the first party No. 1 can in no way be held to be either legal or justified.

Issue No. (ii) is answered accordingly in favour of the second party.

9. *Issue No. (iii)*—In view of the findings arrived at on Issue No. (ii), the next question that falls for determination is as to what relief the second party is entitled to.

The learned counsel representing the first party No. 1 referring to the documents Ext. N (the copy of letter of the Joint Director(P & SAD) of the Directorate of Animal Husbandry & Veterinary Services, Odisha, Cuttack) submitted that pursuant to the instructions contained in the letter the Breeder Birds of IPDP were shifted to Chiplima on the 3rd November 2020 and it was intimated to the C.D.V.O., Khordha vide Letter No. 44/IPDP, dated the 27th March 2025 of the first party No. 1 and therefore, when the IPDP operations were completely ceased no relief is available to the second party as claimed in the instant application. *Per contra*, it was submitted on behalf of the second party that there being evidence on record, elicited through M.W. 1 during his cross-examination at Para. 32 regarding engagement of other workers through service providers and further as it reveals from the annexure to Ext. R, the proceedings of the technical committee that the organization of the first party No. 1 is not completely closed and there was a suggestion for shifting of the IPDP, Laxmisagar to outskirts of human habitat of BMC, Bhubaneswar, which is still pending consideration at the Government level, the second party is entitled to the relief (s) as claimed in his application.

10. There is no dispute over the fact that the second party was through-out engaged under the first party No. 1 as a daily wage labourer and his claim for regularization, as made pursuant to the direction of the Hon'ble Court in W.P.C (OAC) No. 1061 of 2016 (Ext. H) was rejected by the authority vide Ext. J. Keeping in view the status of the second party under the first party No. 1, a reference in this regard may be made to the judgment of the Hon'ble Apex Court in the case of B.S.N.L. *Vs.* Bhurumal, reported in AIR 2014 (SC) 1188, wherein their Lordships have held as follows :—

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> 23. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or *mala fide* and/or by way of victimization, unfair labour practice etc. However, when it comes to the case of termination of a daily wage worker and where the termination is found

illegal because of procedural defect, namely in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.

24. Reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily wage basis and even after he is reinstated, he has no right to seek regularization (See: State of Karnataka *Vs.* Uma Devi (2006) 4 SCC 1). Thus when he cannot claim regularization and he has no right to continue even as a daily wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose.

11. Keeping an eye over the settled proposition of law as mentioned *supra*, the status and length of service of the second party, so also his age, the Tribunal is not inclined to pass an order of reinstatement in his favour, but at the same time considering his length of employment under the first party and the fact that his disengagement is in contravention of the provisions of the Act, a lump sum compensation in lieu of his reinstatement and back wages is found to be an appropriate relief in his favour and accordingly the first party No. 1 is directed to pay him a compensation of Rs. 1,00,000 (Rupees one lakh only) in lieu of the reliefs (s) claimed by him in his application within a period of two months of the date of publication of the Award in the Official Gazette.

The 2-A (2) application is disposed of accordingly.

Dictated and corrected by me.

BENUDHAR PATRA
08-07-2025
Presiding Officer
Industrial Tribunal, Bhubaneswar

BENUDHAR PATRA
08-07-2025
Presiding Officer
Industrial Tribunal, Bhubaneswar

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By order of the Governor
MADHUMITA NAYAK
Special Secretary to Government

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